

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1106**

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**Introduced by Assembly Member Achadjian**

February 18, 2011

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An act to amend ~~Section 6425~~ *Sections 62.5 and 6434* of the Labor Code, relating to ~~employment~~ *occupational safety and health*.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1106, as amended, Achadjian. Occupational safety and health: ~~death or serious bodily impairment~~ *local public entities: penalty moneys: grants*.

*Existing law requires the Commission on Health and Safety and Workers' Compensation in the Department of Industrial Relations to review and approve applications from employers and employee organizations, as well as applications submitted jointly by an employer organization and an employee organization, for grants to assist in establishing effective occupational injury and illness prevention programs, as specified.*

*Existing law requires certain civil and administrative penalties relating to workers' compensation to be deposited in the Workers' Compensation Administration Revolving Fund. Existing law authorizes the department to expend these funds upon approval by the commission, and upon appropriation from the fund by the Legislature, to fund the above-described grants and other activities and expenses of the commission.*

*Existing law requires any civil or administrative penalty assessed pursuant to the California Occupational Safety and Health Act of 1973 against a school district, county board of education, county*

*superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions to be deposited with the Workplace Health and Safety Revolving Fund. Existing law requires moneys in the fund that are not refunded to be expended as provided for in the above-described grant provisions to assist schools in establishing effective occupational injury and illness prevention programs.*

*This bill would, instead, require any civil or administrative penalty assessed pursuant to the California Occupational Safety and Health Act of 1973 against a county, city, special district, public authority, public agency, joint powers authority, school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions to be deposited with the Workers' Compensation Administration Revolving Fund. The bill would require moneys in the fund that are not refunded to be expended as provided for in the above-described grant provisions to assist local public entities in establishing and maintaining effective occupational injury and illness prevention programs.*

*This bill would add funding the above-described grants to the list of purposes for which moneys in the Workers' Compensation Administration Revolving Fund may be expended. This bill would make other nonsubstantive changes to these provisions.*

*Existing law, the Labor Code Private Attorneys General Act of 2004, allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are distributed 75% to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except as specified.*

*This bill would provide that the above provisions pertaining to civil or administrative penalties assessed pursuant to the California Occupational Safety and Health Act of 1973 shall not apply to that portion of any civil or administrative penalty that is distributed directly to an aggrieved employee pursuant to the above-described provisions.*

~~Existing law prescribes criminal penalties for the willful violation of an occupational safety or health standard or order causing the death of, or permanent or prolonged impairment to, the employee.~~

~~This bill would make nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 62.5 of the Labor Code is amended to*  
2     *read:*

3     62.5. (a) (1) The Workers' Compensation Administration  
4     Revolving Fund is hereby created as a special account in the State  
5     Treasury. ~~Money~~ Moneys in the fund ~~may~~ shall be expended by  
6     the department, upon appropriation by the Legislature, for all of  
7     the following purposes, and may not be used or borrowed for any  
8     other purpose:

9     (A) For the administration of the workers' compensation  
10    program set forth in this division and Division 4 (commencing  
11    with Section 3200), other than the activities financed pursuant to  
12    Section 3702.5.

13    ~~(B) For the Return-to-Work Program set forth in Section 139.48.~~

14    ~~(C)~~

15    (B) For the enforcement of the insurance coverage program  
16    established and maintained by the Labor Commissioner pursuant  
17    to Section 90.3.

18    (C) For the purposes described in Sections 78 and 6434.

19    (2) The fund shall consist of surcharges made pursuant to  
20    paragraph (1) of subdivision (f).

21    (b) (1) The Uninsured Employers Benefits Trust Fund is hereby  
22    created as a special trust fund account in the State Treasury, of  
23    which the director is trustee, and its sources of funds are as  
24    provided in paragraph (1) of subdivision (f). Notwithstanding  
25    Section 13340 of the Government Code, the fund is continuously  
26    appropriated for the payment of nonadministrative expenses of the  
27    workers' compensation program for workers injured while  
28    employed by uninsured employers in accordance with Article 2  
29    (commencing with Section 3710) of Chapter 4 of Part 1 of Division  
30    4, and shall not be used for any other purpose. All moneys collected  
31    shall be retained in the trust fund until paid as benefits to workers  
32    injured while employed by uninsured employers.  
33    Nonadministrative expenses include audits and reports of services

1 prepared pursuant to subdivision (b) of Section 3716.1. The  
2 surcharge amount for this fund shall be stated separately.

3 (2) Notwithstanding any other provision of law, all references  
4 to the Uninsured Employers Fund shall mean the Uninsured  
5 Employers Benefits Trust Fund.

6 (3) Notwithstanding paragraph (1), in the event that budgetary  
7 restrictions or impasse prevent the timely payment of administrative  
8 expenses from the Workers' Compensation Administration  
9 Revolving Fund, those expenses shall be advanced from the  
10 Uninsured Employers Benefits Trust Fund. Expense advances  
11 made pursuant to this paragraph shall be reimbursed in full to the  
12 Uninsured Employers Benefits Trust Fund upon enactment of the  
13 annual Budget Act.

14 (4) Any moneys from penalties collected pursuant to Section  
15 3722 as a result of the insurance coverage program established  
16 under Section 90.3 shall be deposited in the State Treasury to the  
17 credit of the Workers' Compensation Administration Revolving  
18 Fund created under this section, to cover expenses incurred by the  
19 director under the insurance coverage program. The amount of  
20 any penalties in excess of payment of administrative expenses  
21 incurred by the director for the insurance coverage program  
22 established under Section 90.3 shall be deposited in the State  
23 Treasury to the credit of the Uninsured Employers Benefits Trust  
24 Fund for nonadministrative expenses, as prescribed in paragraph  
25 (1), and notwithstanding paragraph (1), shall only be available  
26 upon appropriation by the Legislature.

27 (c) (1) The Subsequent Injuries Benefits Trust Fund is hereby  
28 created as a special trust fund account in the State Treasury, of  
29 which the director is trustee, and its sources of funds are as  
30 provided in paragraph (1) of subdivision (f). Notwithstanding  
31 Section 13340 of the Government Code, the fund is continuously  
32 appropriated for the nonadministrative expenses of the workers'  
33 compensation program for workers who have suffered serious  
34 injury and who are suffering from previous and serious permanent  
35 disabilities or physical impairments, in accordance with Article 5  
36 (commencing with Section 4751) of Chapter 2 of Part 2 of Division  
37 4, and Section 4 of Article XIV of the California Constitution, and  
38 shall not be used for any other purpose. All moneys collected shall  
39 be retained in the trust fund until paid as benefits to workers who  
40 have suffered serious injury and who are suffering from previous

1 and serious permanent disabilities or physical impairments.  
2 Nonadministrative expenses include audits and reports of services  
3 pursuant to subdivision (c) of Section 4755. The surcharge amount  
4 for this fund shall be stated separately.

5 (2) Notwithstanding any other law, all references to the  
6 Subsequent Injuries Fund shall mean the Subsequent Injuries  
7 Benefits Trust Fund.

8 (3) Notwithstanding paragraph (1), in the event that budgetary  
9 restrictions or impasse prevent the timely payment of administrative  
10 expenses from the Workers' Compensation Administration  
11 Revolving Fund, those expenses shall be advanced from the  
12 Subsequent Injuries Benefits Trust Fund. Expense advances made  
13 pursuant to this paragraph shall be reimbursed in full to the  
14 Subsequent Injuries Benefits Trust Fund upon enactment of the  
15 annual Budget Act.

16 (d) The Occupational Safety and Health Fund is hereby created  
17 as a special account in the State Treasury. Moneys in the account  
18 may be expended by the department, upon appropriation by the  
19 Legislature, for support of the Division of Occupational Safety  
20 and Health, the Occupational Safety and Health Standards Board,  
21 and the Occupational Safety and Health Appeals Board, and the  
22 activities these entities perform as set forth in this division, and  
23 Division 5 (commencing with Section 6300).

24 (e) The Labor Enforcement and Compliance Fund is hereby  
25 created as a special account in the State Treasury. Moneys in the  
26 fund may be expended by the department, upon appropriation by  
27 the Legislature, for the support of the activities that the Division  
28 of Labor Standards Enforcement performs pursuant to this division  
29 and Division 2 (commencing with Section 200), Division 3  
30 (commencing with Section 2700), and Division 4 (commencing  
31 with Section 3200). The fund shall consist of surcharges imposed  
32 pursuant to paragraph (3) of subdivision (f).

33 (f) (1) Separate surcharges shall be levied by the director upon  
34 all employers, as defined in Section 3300, for purposes of deposit  
35 in the Workers' Compensation Administration Revolving Fund,  
36 the Uninsured Employers Benefits Trust Fund, the Subsequent  
37 Injuries Benefits Trust Fund, and the Occupational Safety and  
38 Health Fund. The total amount of the surcharges shall be allocated  
39 between self-insured employers and insured employers in  
40 proportion to payroll respectively paid in the most recent year for

1 which payroll information is available. The director shall adopt  
2 reasonable regulations governing the manner of collection of the  
3 surcharges. The regulations shall require the surcharges to be paid  
4 by self-insurers to be expressed as a percentage of indemnity paid  
5 during the most recent year for which information is available,  
6 and the surcharges to be paid by insured employers to be expressed  
7 as a percentage of premium. In no event shall the surcharges paid  
8 by insured employers be considered a premium for computation  
9 of a gross premium tax or agents' commission. In no event shall  
10 the total amount of the surcharges paid by insured and self-insured  
11 employers exceed the amounts reasonably necessary to carry out  
12 the purposes of this section.

13 (2) The surcharge levied by the director for the Occupational  
14 Safety and Health Fund, pursuant to paragraph (1), shall not  
15 generate revenues in excess of fifty-two million dollars  
16 (\$52,000,000) on and after the 2009–10 fiscal year, adjusted for  
17 each fiscal year as appropriate to reconcile any over/under  
18 assessments from previous fiscal years pursuant to Sections 15606  
19 and 15609 of Title 8 of the California Code of Regulations, and  
20 may increase by not more than the state-local government deflator  
21 each year thereafter through July 1, 2013, and, as appropriate, to  
22 reconcile any over/under assessments from previous fiscal years.  
23 For the 2013–14 fiscal year, the surcharge level shall return to the  
24 level in place on June 30, 2009, adjusted for inflation based on the  
25 state-local government deflator.

26 (3) A separate surcharge shall be levied by the director upon all  
27 employers, as defined in Section 3300, for purposes of deposit in  
28 the Labor Enforcement and Compliance Fund. The total amount  
29 of the surcharges shall be allocated between employers in  
30 proportion to payroll respectively paid in the most recent year for  
31 which payroll information is available. The director shall adopt  
32 reasonable regulations governing the manner of collection of the  
33 surcharges. In no event shall the total amount of the surcharges  
34 paid by employers exceed the amounts reasonably necessary to  
35 carry out the purposes of this section.

36 (4) The surcharge levied by the director for the Labor  
37 Enforcement and Compliance Fund shall not exceed thirty-seven  
38 million dollars (\$37,000,000) in the 2009–10 fiscal year, adjusted  
39 as appropriate to reconcile any over/under assessments from  
40 previous fiscal years, and shall not be adjusted each year thereafter

1 by more than the state-local government deflator, and, as  
2 appropriate, to reconcile any over/under assessments from previous  
3 fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the  
4 California Code of Regulations.

5 (5) The regulations adopted pursuant to paragraph (1) to (4),  
6 inclusive, shall be exempt from the rulemaking provisions of the  
7 Administrative Procedure Act (Chapter 3.5 (commencing with  
8 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
9 Code).

10 (g) On and after July 1, 2013, subdivision (e) and paragraphs  
11 (2) to (4), inclusive, of subdivision (f) are inoperative, unless a  
12 later enacted statute, that is enacted before July 1, 2013, deletes  
13 or extends that date.

14 *SEC. 2. Section 6434 of the Labor Code is amended to read:*

15 6434. (a) Any civil or administrative penalty assessed pursuant  
16 to this chapter against a *county, city, special district, public*  
17 *authority, public agency, joint powers authority, school district,*  
18 *county board of education, county superintendent of schools,*  
19 *charter school, community college district, California State*  
20 *University, University of California, or joint powers agency*  
21 *performing education functions shall be deposited—*~~with~~ *in the*  
22 ~~Workplace Health and Safety Workers' Compensation~~  
23 *Administration* Revolving Fund established pursuant to Section  
24 78 62.5.

25 (b) Any *county, city, special district, public authority, public*  
26 *agency, joint powers authority, school district, county board of*  
27 *education, county superintendent of schools, charter school,*  
28 *community college district, California State University, University*  
29 *of California, or joint powers agency performing education*  
30 *functions may apply for a refund of their civil penalty, with interest,*  
31 *if all conditions previously cited have been abated, they have*  
32 *abated any other outstanding citation, and if they have not been*  
33 *cited by the division for a serious violation at the same county,*  
34 *city, special district, public authority, public agency, joint powers*  
35 *authority, or school within two years of the date of the original*  
36 *violation. Funds not applied for within two years and six months*  
37 *of the time of the original violation shall be expended as provided*  
38 *for in Section 78 to assist—*~~schools~~ *local public entities in*  
39 *establishing and maintaining effective occupational injury and*  
40 *illness prevention programs.*

1     (c) *This section does not apply to the portion of any civil or*  
2     *administrative penalty which is distributed directly to an aggrieved*  
3     *employee pursuant to Section 2699.*

4     SECTION 1. ~~Section 6425 of the Labor Code is amended to~~  
5     ~~read:~~

6     ~~6425. (a) An employer and an employee having direction,~~  
7     ~~management, control, or custody of any employment, place of~~  
8     ~~employment, or of any other employee, who willfully violates an~~  
9     ~~occupational safety or health standard, order, or special order, or~~  
10    ~~Section 25910 of the Health and Safety Code, and that violation~~  
11    ~~caused death to an employee, or caused permanent or prolonged~~  
12    ~~impairment of the body of an employee, is guilty of a public~~  
13    ~~offense punishable by imprisonment in a county jail for a term not~~  
14    ~~exceeding one year, or by a fine not exceeding one hundred~~  
15    ~~thousand dollars (\$100,000), or by both that imprisonment and~~  
16    ~~fine; or by imprisonment in the state prison for 16 months, or two~~  
17    ~~or three years, or by a fine of not more than two hundred fifty~~  
18    ~~thousand dollars (\$250,000), or by both that imprisonment and~~  
19    ~~fine; and in either case, if the defendant is a corporation or a limited~~  
20    ~~liability company, the fine may not exceed one million five hundred~~  
21    ~~thousand dollars (\$1,500,000).~~

22    ~~(b) If the conviction is for a violation committed within seven~~  
23    ~~years after a conviction under subdivision (b), (c), or (d) of Section~~  
24    ~~6423 or subdivision (c) of Section 6430, punishment shall be by~~  
25    ~~imprisonment in the state prison for a term of 16 months, two, or~~  
26    ~~three years, or by a fine not exceeding two hundred fifty thousand~~  
27    ~~dollars (\$250,000), or by both that fine and imprisonment, but if~~  
28    ~~the defendant is a corporation or limited liability company, the~~  
29    ~~fine may not be less than five hundred thousand dollars (\$500,000)~~  
30    ~~or more than two million five hundred thousand dollars~~  
31    ~~(\$2,500,000).~~

32    ~~(c) If the conviction is for a violation committed within seven~~  
33    ~~years after a first conviction of the defendant for a crime involving~~  
34    ~~a violation of subdivision (a), punishment shall be by imprisonment~~  
35    ~~in the state prison for two, three, or four years, or by a fine not~~  
36    ~~exceeding two hundred fifty thousand dollars (\$250,000), or by~~  
37    ~~both that fine and imprisonment, but if the defendant is a~~  
38    ~~corporation or a limited liability company, the fine shall not be~~  
39    ~~less than one million dollars (\$1,000,000) but may not exceed three~~  
40    ~~million five hundred thousand dollars (\$3,500,000).~~



1     ~~(d) In determining the amount of the fine to be imposed under~~  
2 ~~this section, the court shall consider all relevant circumstances;~~  
3 ~~including, but not limited to, the nature, circumstance, extent, and~~  
4 ~~gravity of the violation, any prior history of violations by the~~  
5 ~~defendant, the ability of the defendant to pay, and any other matters~~  
6 ~~the court determines the interests of justice require.~~

7     ~~(e) As used in this section, “willfully” has the same definition~~  
8 ~~as it has in Section 7 of the Penal Code. This subdivision is~~  
9 ~~intended to be a codification of existing law.~~

10    ~~(f) This section does not prohibit a prosecution under Section~~  
11 ~~192 of the Penal Code.~~